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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	)	Magistrate Case No. 08MJ8778
v.	)	FINDINGS OF FACT AND ORDER OF DETENTION
Ubaldo Enrique BOJORQUEZ-Caro, Defendant.	)	

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on August 29, 2008, to determine whether defendant Ubaldo Enrique BOJORQUEZ-Caro, should be held in custody pending trial on the grounds that he is a flight risk. Assistant U.S. Attorney Karla K. Davis appeared on behalf of the United States. James Johnson of Federal Defenders of San Diego, Inc., appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the pretrial services report, and the criminal complaint issued against the August 26, 2008, by this Court, the Court concludes that the following facts establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the Defendant required.

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I

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1)

1. The Defendant is charged in Criminal Complaint No. 08MJ8778 with the importation of 2.82 kilograms (6.20 pounds) of methamphetamine into the United States in violation of 21 U.S.C. §§ 952 and 960. Therefore, probable cause exists to believe the Defendant committed the charged offense.

2. The charged offense is an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Uniform Controlled Substances Act (21 U.S.C.§ 801, et seq.). Thus, there arises a presumption that no condition or combination of conditions will reasonably assure the appearance of the Defendant. See, 18 U.S.C. § 3142(e).

3. The offense carries with it a minimum mandatory sentence of 10 years and a maximum sentence of life. See, 21 U.S.C. § 960(b)(2)(B). According to the United States Sentencing Guidelines, the Base Offense level is 36, see, USSG § 2D1.1(2). Assuming the Defendant's criminal history score places him in Criminal History Category I, see, USSG § 4A1.1., the sentencing range for the Defendant is 188-235 months in prison.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2)

1. On August 25, 2008, Defendant was the driver and sole occupant of a 1993 Chevrolet pickup, as he entered the United States from Mexico, through the Calexico, California, east port of entry. Defendant stated the vehicle belonged to his boss, and he was on his way to Kragen Auto to buy some auto parts. Customs & Border Protection Officer (CBPO) Mercado noted the transmission case under the engine appeared to be unusually oversized and modified. CBPO Mercado escorted the Defendant and the vehicle to the vehicle secondary lot for further inspection. During secondary inspection, a Narcotic Detection Dog alerted to the vehicle undercarriage near the driver's side. Further inspection of the vehicle revealed six (6) packages hidden in a non-factory compartment within the transmission case. The total weight of the six packages was approximately 2.82 kilograms (6.20 pounds) of methamphetamine.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3)

1. The Defendant is a citizen of Mexico.

2. The Defendant resides in Mexicali, Baja California, Mexico.

3. The Defendant has an uncle residing in Brawley, California.

4. The Defendant is employed as a laborer in Mexico.

5. The Defendant has no legal right to remain or work in the United States, as he only possesses a Border Crossing Card.

D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4)

1. Other than that the charged crime is a drug trafficking offense, there is nothing to suggest that the release of the Defendant would pose a danger to any person or the community. The Defendant does not have any criminal history.

II

REASONS FOR DETENTION

A. There is probable cause to believe that the Defendant committed the offense charged in Criminal Complaint No. 08MJ8778, namely, the importation of 2.82 kilograms (6.20 pounds) methamphetamine into the United States in violation of 21 U.S.C. §§ 952 and 960.

B. The Defendant faces a substantial period of time in custody if convicted of the offense charged in the Complaint. He therefore has a strong motive to flee.

C. Based upon the Court's findings that the Defendant has not rebutted the presumption, there is probable cause to believe that the Defendant committed an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801, et seq.), that no condition or combination of conditions will reasonably assure the appearance of the Defendant at future court proceedings.

D. Defendant has further offered insufficient collateral to rebut the presumption under 21 U.S.C. § 801, et seq.

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III

ORDER

IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

While in custody, upon order of a court of the United States or upon the request of an attorney for the United States, the person in charge of the correctional facility shall deliver the Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance stipulated to by defense and government counsel.

THIS ORDER IS ENTERED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: Sept. 2, 2008.

PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE

Prepared by:

KAREN P. HEWITT
United States Attorney

KARLA K. DAVIS
Assistant U. S. Attorney

cc: James Johnson
of Federal Defenders of San Diego, Inc.